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2 Including Professional Corporations
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dba Integretel
9

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In re

Case No. 07-52890 ASW

14 THE BILLING RESOURCE, dba Integretel, a
California corporation,

Chapter 11

15 Debtor.

16 Tax ID: 33-0289863
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**DEBTOR'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
USE OF CASH COLLATERAL ON A
FURTHER INTERIM BASIS INCLUDING
APPROVAL OF FIRST AMENDED
PAYMENT ONE STIPULATION
THROUGH AND INCLUDING
NOVEMBER 16, 2007 AND OMNIBUS
REPLY TO OBJECTIONS TO DEBTOR'S
CASH COLLATERAL MOTION**

Date: November 2, 2007
Time: 1:00 p.m.
Place: United States Bankruptcy Court
280 South First Street
San Jose, California
Judge: Hon. Arthur S. Weissbrodt
Courtroom: 3020

1 The above-captioned debtor and debtor in possession, The Billing Resource, dba
 2 Integretel, a California corporation (the "Debtor"), hereby files this Memorandum of Points and
 3 Authorities in support of the Debtor's use of cash collateral on a further interim basis through and
 4 including November 16, 2007, or as soon thereafter as the Court and counsel are available for a
 5 further hearing on the motion, and Omnibus Reply (the "Reply") to various objections filed on or
 6 about October 26, 2007 (the "Objections") to the Debtor's Cash Collateral Motion.¹

7 Of the Debtor's numerous creditors, only three entities filed objections to the Debtor's
 8 continued motion for use of cash collateral beyond November 2, 2007. Each of these three
 9 remaining objections was previously made to the Court, previously addressed by the Debtor, and
 10 properly overruled by the Court.

11 Consistent with the Court's prior determinations, good cause exists to grant the Debtor's
 12 continued use of cash collateral *for the very limited period of the next two weeks, through and*
 13 *including November 16, 2007.* The Official Unsecured Creditors' Committee (the "Committee")
 14 supports the Debtor's request. Granting the Debtor this further breathing spell will provide the
 15 Debtor the needed time to meet with the Committee to further explore the terms for a possible plan
 16 of reorganization contemplating a continuation of business operations, with the goal of allowing
 17 the Debtor to exit bankruptcy as quickly as possible, while also maximizing value to unsecured
 18 creditors.

19 ARGUMENT

20 **A. The Committee Supports the Debtor's Further Interim Use of Cash Collateral Until** 21 **November 16, 2007.**

22 The Debtor filed its voluntary bankruptcy petition six weeks ago on September 16, 2007.

23
 24 ¹ The budget corresponding to the Debtor's requested continued interim use of cash collateral
 25 through and including November 16, 2007 is the budget which was attached as Exhibit B to the
 26 Declaration of Paul Weber dated October 11, 2007 (the "Debtor's Budget"), a copy of which
 27 budget was also attached as Exhibit B to the "Notice of Signing of Further Order Approving
 28 Interim Use of Cash Collateral and Granting Replacement Liens and Approving First Amended
 Stipulation With PaymentOne Corporation Regarding Use of Cash Collateral and Adequate
 Protection on an Interim Basis Through and Including November 2, 2007." A revised cash
 collateral order in substantially the form the Debtor currently intends to present to the Court at the
 November 2 hearing is attached hereto as Exhibit 1.

1 On September 26, 2007, the Court entered its "Order Approving Interim Use of Cash Collateral
2 and Granting Replacement Liens and Approving First Amended Stipulation with PaymentOne
3 Corporation Regarding Use of Cash Collateral and Adequate Protection on an Interim Basis."

4 On October 1, 2007, the Office of the United States Trustee appointed the Official
5 Committee of Unsecured Creditors (the "Committee") in this case pursuant to section 1102(a)(2).
6 On October 10, 2007, the Committee participated in an initial face-to-face meeting with the
7 Debtor and its representatives for which several Committee members flew across the country and
8 for which others attended by telephone. A quorum of the Committee was present. Prior to and at
9 the October 10 meeting, the Debtor provided the Committee with financial information including
10 projections, and various other types of information. Following the October 10 meeting the Debtor
11 has provided the Committee with additional information.

12 At the October 10 meeting, it was agreed that the Committee would consent to the
13 Debtor's continued use of cash collateral on the terms proposed by the Debtor in its budget on an
14 interim basis for a period of two to three weeks. The Debtor and the Committee entered into a
15 stipulation regarding the Debtor's use of cash collateral on an interim basis through and including
16 November 2, 2007. During that time it was contemplated that the Debtor would negotiate with the
17 Committee a term sheet for a plan of reorganization contemplating a continuation of business
18 operations with the goal of allowing the Debtor to exit bankruptcy as quickly as possible, while
19 also maximizing value to unsecured creditors.

20 On October 16, 2007, the Court signed its "Further Order Approving Interim Use of Cash
21 Collateral and Granting Replacement Liens and Approving First Amended Stipulation with
22 PaymentOne Corporation Regarding Use of Cash Collateral and Adequate Protection on an
23 Interim Basis Through and Including November 2, 2007."

24 Due to scheduling issues, the Debtor and the Committee have not yet had a subsequent
25 meeting to further explore with more concrete terms for a possible plan of reorganization. The
26 Debtor and the Committee have scheduled such a meeting in the immediate future. The
27 Committee has consented to the Debtor's continued use of cash collateral in its current budget on
28 an interim basis for a period of two weeks.

Continued use of cash collateral makes eminent sense. By continuing to operate, the Debtor is able to deal with the LECs in the ordinary course of business and thus avoids offsets, increases in reserves claimed by LECs or delays in payments. The Debtor is only entity that can effectively perform this function. In addition, the Debtor's customers need the Debtor to continue to process billing transactions. A key component for any recovery to creditors in this bankruptcy case will be the ability to establish the amount of each unsecured claim, which is an extremely complicated function which the Debtor is by far the best, and likely the only, party able to quickly and properly perform. The Debtor also has the necessary institutional knowledge required to negotiate with New York and Tennessee tax claimants. In addition, without continued operations the subsidiary PaymentOne is out of business, and its continued operations are important to the Debtor and its creditors. Moreover, as a majority-owned subsidiary PaymentOne is a valuable asset of the bankruptcy estate. Likewise, without continued operations, Inmate Calling Solutions' business is severely threatened, and its operations are also important to the Debtor. Granting the Debtor the requested further interim use of cash collateral for the next two weeks, through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the motion, is both the prudent course of action and in the best interest of the Debtor's bankruptcy estate.

B. PaymentOne Supports the Debtor's Further Interim Use of Cash Collateral Until November 16, 2007.

PaymentOne has consented to the Debtor's further interim use of cash collateral through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the motion. PaymentOne also agrees that the First Amended PaymentOne Stipulation remains in effect for the interim period, except as revised in the proposed Order approving such interim use by the Debtor.

C. Personal Voice Does Not Have a Valid Security Interest Against the Debtor and, In Any Event, Is Adequately Protected by the Relief Afforded to It.

Personal Voice filed a renewed objection to the Debtor's continued motion to use cash collateral. Personal Voice's renewed objection is the same as its prior objection filed on October

1 10 and the arguments raised by Personal Voice at the October 15 Interim Hearing.

2 As previously set forth in the Debtor's Motion, Personal Voice does not have a security
3 interest in the Debtor's cash collateral because Personal Voice's alleged security interest is not in
4 any assets of the Debtor, but instead purports simply to be in amounts to which Personal Voice
5 may be entitled under its contract with the Debtor. Similarly, Personal Voice does not possess a
6 security interest in the Debtor's cash collateral based upon an alleged security interest in any
7 reserves under the parties' contract because there were no segregated reserves. As further noted in
8 the Motion, irrespective of Personal Voice's lack of a security interest in any of the Debtor's assets
9 or cash collateral, the Debtor proposes to give Personal Voice a replacement lien on the same
10 assets, if any, that it had an interest in pre-petition.

11 In addition to these prior arguments made by Debtor in the Motion, there are further
12 reasons why Personal Voice does not have a perfected security interest in any of the Debtor's
13 assets, including "Net Proceeds" or cash collateral. First, Personal Voice's UCC financing
14 statement, which was filed March 12, 2002, lapsed on March 12, 2007 (over 6 months before
15 Debtor filed bankruptcy), and Personal Voice did not file a continuation statement. Under UCC
16 Sections 9515(a) and (c), the effectiveness of a filed financing statement lapses 5 years after filing
17 unless before lapsing, a continuation statement is filed. Because Personal Voice failed to file a
18 continuation statement, its security interest no longer is perfected and Personal Voice is not
19 entitled to adequate protection. 11 U.S.C. § 544(a) (trustee or debtor in possession is senior to
20 unperfected security interest); In re: 1726 Washington, D.C. Partners, 120 B.R. 1, 2 (Bankr.
21 D.D.C. 1990) (rents are not cash collateral where secured party's lien was unperfected); In re:
22 Scottsdale Medical Pavilion, 159 B.R. 295, 298 (9th Cir. BAP 1993) (because an unperfected
23 security interest is subject to avoidance under Bankruptcy Code Section 544, such interest is not
24 entitled to much in the way of adequate protection).

25 Also, what Personal Voice purported to take a security interest in were not "all accounts
26 receivable of the [debtor]" but instead were "Net Proceeds," which are not an asset of the Debtor,
27 Personal Voice, or anyone else. In the contract between Debtor and Personal Voice, "Net
28 Proceeds" is simply a method to calculate the cash consideration to which Personal Voice is

1 entitled under the contract. Personal Voice's attempted security interest in "Net Proceeds" is
 2 analogous to a seller of an asset attempting to take a security interest in the purchase price to be
 3 determined under a formula and paid at a later time (as opposed to taking a security interest in the
 4 asset itself). Personal Voice has only an unsecured claim against Debtor for Net Proceeds.²

5 Personal Voice's renewed objection simply restates its prior arguments which have been
 6 previously addressed and properly rejected by the Court. Personal Voice has not provided any
 7 support for a different result. Nor has Personal Voice met its burden of proof on the issue of the
 8 validity, priority and extent of its alleged interest in the Debtor's property. 11 U.S.C. § 363(p).

9 Personal Voice simply does not possess a valid, perfected and enforceable security interest
 10 in the Debtor's cash collateral. Notwithstanding that, the Debtor will provide Personal Voice with
 11 a replacement lien of the same type and character which it possessed pre-petition. Personal Voice
 12 is entitled to no more.

13 **F. The Debtor Has Adequately Addressed the U.S. Trustee's Concern.**

14 The U.S. Trustee raised a concern about the Motion in connection with a portion of the
 15 carve-out for professionals contained in the First Amended PaymentOne Stipulation and its effect
 16 as to any subsequently appointed trustee or its professionals. The Debtor has addressed with
 17 PaymentOne the U.S. Trustee's objection, and PaymentOne agreed to change the carve-out
 18 language contained in the proposed order in a manner which the Debtor believes addresses and
 19 resolves the U.S. Trustee's objection. PaymentOne has agreed during the continued interim period
 20

21 ² Personal Voice's opposition asserts that accounts receivable generated from Personal Voice
 22 providing services to end users remained property of Personal Voice and were not transferred to
 23 Debtor when Personal Voice submitted Billing Transactions to Debtor. This assertion is belied by
 24 the facts. Nothing in the agreement between Debtor and Personal Voice states that Personal Voice
 25 is maintaining ownership of anything. In fact, as noted by Personal Voice in its opposition,
 26 Personal Voice attempted to take a security interest in "Personal Voice Receivables", indicating
 27 that the parties believed that Personal Voice did not own any receivables generated. The lapsed
 28 financing statement does not indicate that it is "precautionary". If the parties had believed that
 Personal continued to own receivables, Personal Voice would not have attempted to obtain a
 security interest from Debtor. Moreover, as the Debtor has previously stated, it is common
 knowledge in this industry that the Debtor would be selling the billing transaction receivables to
 the LECs and that the Debtor's contracts with the LECs are structured as the purchase by the LECs
 of the Debtor's accounts receivable, which obviously could not be done if Personal Voice retained
 title to the receivables. See Declaration of Ken Dawson dated October 11.

1 until November 16 to a full carveout to professionals for the Debtor, the Committee and any
2 subsequently appointed trustee – retroactive to the filing of this case.

3 **H. The Receiver's Arguments Are and Were Appropriately the Subject of the Adversary**
4 **Proceeding Hearing, Not the November 2 Cash Collateral Motion Hearing.**

5 The Receiver was appointed as receiver for two of the Debtor's prior customers. In
6 connection with a prior hearing on the Debtor's cash collateral motion, with the stipulation of the
7 Debtor, a segregated, blocked account debtor in possession bank account in the Debtor's name was
8 established into which the Debtor deposited approximately \$1.7 million, which funds cannot be
9 moved absent further order of this Court (the "Blocked Account"). In connection with the October
10 15 Interim Hearing, the Debtor demonstrated the need for use of the funds in the Blocked
11 Account.³ Therefore, the Debtor, with the support of the Committee, asked the Court to unblock
12 the Blocked Account. These issues are being addressed in adversary proceeding 07-5156 (the
13 "Adversary Proceeding") commenced in this case. This Court properly found in its October 16,
14 2007 findings that the FTC's and the Receiver's objections to the Debtor's continued use of cash
15 collateral would be considered resolved in the context of the Adversary Proceeding. The Debtor
16 filed further pleadings for the October 17 hearing in the Adversary Proceeding as to why the Court
17 should issue a preliminary injunction against the Receiver and the FTC, and in those pleadings the
18 Debtor demonstrated why the Court should properly unblock the account and permit the Debtor to
19 use the funds contained therein in its operations and reorganization efforts. The Receiver and the
20 FTC opposed such relief, and the Court held the October 17 hearing in the Adversary Proceeding
21 on those issues

22 The Debtor has previously shown that the Receiver is not a secured creditor of the Debtor,
23 has no security interest in the Debtor's assets, is entitled to no greater status than the Debtor's other
24 unsecured creditors, and is not entitled to adequate protection. In his latest opposition the
25 Receiver again renews the same arguments he has made throughout this case. However, those

26 ³ See The "Alternative Budget" attached to the Declaration of Paul Weber dated October 11, 2007;
27 Debtor's October 11 Omnibus Reply to Cash Collateral Objections at 16:4-17. The Blocked
28 Account funds are needed and the Debtor should be allowed to reorganize without expending
substantial legal fees to defend the Florida Action.

1 arguments properly belong in the Adversary Proceeding and should be considered therein, not in
2 the context of the Debtor's motion to use cash collateral on a further interim basis. The Receiver
3 himself acknowledges this in his prior objection. See Receiver October 10 Objection at 2:13-17.
4 The Receiver's arguments in his latest objection were and should have been the subject of the
5 October 17 hearing in the Adversary Proceeding, not the November 2 hearing on the Debtor's
6 motion to use cash collateral on a further interim basis.

7 The Receiver claims that the Debtor has never established that this Court has jurisdiction
8 over approximately \$1.7 million which is the subject of the dispute between the Debtor and the
9 Receiver. Not so. This Court has exclusive jurisdiction over all of the Debtor's assets pursuant to
10 28 U.S.C. section 1334(e)(1). The Blocked Account is irrelevant to the Court's jurisdiction over
11 the Debtor's assets as it was created with the express understanding of all parties that doing so was
12 not an admission that these were the "Subject Funds" claimed by the Receiver.

13 The Receiver argues that the Debtor's use of cash collateral should be limited because the
14 Debtor purportedly represented to the Eleventh Circuit Court of Appeals that "it will hold the
15 [\$1.7 million in funds] and not dissipate them." See Receiver's October 26 Objection at 4:8-9.
16 The Receiver's argument is nothing more than a mischaracterization, as what the Debtor actually
17 wrote was that the status quo should be maintained and that the status quo is "that enforcement of
18 the Omnibus Order is stayed and that [the Debtor] still holds the disputed funds." The status quo
19 is and was the Debtor's possession and use of all of its money and nothing the Debtor said to the
20 Eleventh Circuit is inconsistent with the Debtor using its money.

21 The Receiver's arguments were addressed at the October 17 Adversary Proceeding hearing,
22 and need not be addressed again at the November 2 cash collateral hearing. In any event, the
23 Receiver's arguments are incorrect, and should be overruled.

24 **I. Similarly, the FTC's Opposition Is Not Properly the Subject of the November 2 Cash**
25 **Collateral Motion Hearing, But Rather the Subject of the Adversary Proceeding**
26 **Hearing and Has Been Addressed and Should be Resolved in that Context.**

27 The FTC also filed a limited objection to the Debtor's continued use of cash collateral. For
28 the same reasons as just discussed with respect to the Receiver's objection, the FTC's arguments

1 are not properly the subject of the November 2 cash collateral hearing, but instead are and were
 2 properly the subject of the Adversary Proceeding and the October 17 hearing therein, and were
 3 and will be considered by the Court in that context. The Debtor demonstrated at the October 17
 4 hearing in the Adversary Proceeding that a stay of the FTC action should be granted to eliminate
 5 the need to spend extensive funds defending that action. Nothing in the FTC's latest objection
 6 demonstrates why a two week use of cash collateral supported by the Committee should not be
 7 granted.

8 CONCLUSION

9 For the reasons set forth herein as well as the Debtor's other cash collateral motion papers,
 10 good cause exists to approve the Debtor's use of cash collateral, including approval of the First
 11 Amended PaymentOne Stipulation, for a further interim period through and including November
 12 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the
 13 motion. If the Debtor is not permitted to use cash collateral, the result will be the forced cessation
 14 of the Debtor's business as well as the forced closure of its most valuable asset, PaymentOne.
 15 Such a result would be not be in the best interests of the Debtor's creditors or its bankruptcy estate.

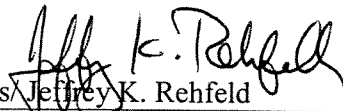
16 The Committee supports the Debtor's use of cash collateral on an interim basis through and
 17 including November 16, 2007. Granting the Debtor's use of its cash collateral on an interim basis
 18 will permit time the Debtor to meet with the Committee regarding a possible plan of
 19 reorganization contemplating a continuation of business operations, with the goal of allowing the
 20 Debtor to exit bankruptcy as quickly as possible, while also maximizing value to unsecured
 21 creditors.

22 Dated: October 30, 2007

Respectfully submitted,

23 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

24 By


 /s/ Jeffrey K. Rehfeld

25 JEFFREY K. REHFELD

26 Attorneys for Debtor The Billing Resource, dba
 27 Integretel

EXHIBIT 1

1 SHEPPARD, MULLIN, RICHTER &
2 HAMPTON LLP

3 A Limited Liability Partnership
4 Including Professional Corporations

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15 Attorneys for Debtor and Debtor-in-
16 Possession

17 The Billing Resource, dba Integretel

18 UNITED STATES BANKRUPTCY COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 SAN JOSE DIVISION

21 In re:

22 THE BILLING RESOURCE, dba
23 INTEGRETTEL, a California corporation

24 Debtor.

) Case No. 07-52890 ASW

) Chapter 11

) **FURTHER ORDER APPROVING**
) **INTERIM USE OF CASH COLLATERAL**
) **AND GRANTING REPLACEMENT**
) **LIENS AND APPROVING FIRST**
) **AMENDED STIPULATION WITH**
) **PAYMENTONE CORPORATION**
) **REGARDING USE OF CASH**
) **COLLATERAL AND ADEQUATE**
) **PROTECTION ON A FURTHER**
) **INTERIM BASIS THROUGH AND**
) **INCLUDING NOVEMBER 16, 2007**

) Date: November 2, 2007

) Time: 1:00 p.m.

) Place: United States Bankruptcy Court
) 280 South First Street
) San Jose, California

) Judge: Hon. Arthur S. Weissbrodt

) Courtroom: 3020

1 The Billing Resource, dba Integretel, a California corporation (the "Debtor") filed
2 its "Emergency Motion For Use Of Cash Collateral And Granting Replacement Liens" (the
3 "Motion") in the above-referenced bankruptcy case (the "Bankruptcy Case"). Capitalized terms
4 not otherwise defined herein shall have the meanings ascribed to them in the Motion. A continued
5 interim hearing (the "September 26 Interim Hearing") with respect to the Motion was previously
6 held on September 26, 2007 before the undersigned United States Bankruptcy Judge at the above-
7 noted place. At the September 26 Interim Hearing, counsel for the Debtor presented to the Court a
8 "First Amended Stipulation With PaymentOne Corporation Regarding Use Of Cash Collateral
9 And Adequate Protection" (the "First Amended PaymentOne Stipulation"), a blacklined version of
10 which the Debtor had previously presented to the Court at an initial hearing held on September 21,
11 2007, and requested that the Court approve the First Amended PaymentOne Stipulation on an
12 interim basis at the September 26 Interim Hearing.

13 Pursuant to the Motion, as revised in light of the First Amended PaymentOne
14 Stipulation, the pleadings filed by the Debtor in support of the Motion prior to the September 26
15 Interim Hearing and the statements made at the September 26 Interim Hearing, and Bankruptcy
16 Code Sections 105, 361, and 363, the Court at the September 26 Interim Hearing entered its
17 "Order Approving Interim Use Of Cash Collateral And Granting Replacement Liens And
18 Approving First Amended Stipulation With PaymentOne Corporation Regarding Use Of Cash
19 Collateral And Adequate Protection On An Interim Basis" (the "September 26 Interim Order"). In
20 connection with the September 26 Interim Hearing, the Court also orally approved certain
21 stipulations regarding the Debtor's interim use of cash collateral between the Debtor and the
22 following entities: (a) POL, Inc.; (b) Public Communication Services, Inc.; and (c) David R.
23 Chase, as Receiver for certain entities (the "Receiver").

24 A further continued interim hearing (the "October 15 Interim Hearing") with
25 respect to the Motion was previously held on October 15, 2007 before the undersigned United
26 States Bankruptcy Judge at the above-noted place. Prior to the hearing, the Debtor and the
27 Official Committee of Unsecured Creditors (the "Committee") filed a stipulation (the "Committee
28

1 Support Stipulation") stipulating to the to the Debtor's use of cash collateral on a further interim
2 basis through and including November 2, 2007, or as soon thereafter as the Court and counsel are
3 available for a further hearing on the Motion. Pursuant to the Motion, as revised in light of the
4 First Amended PaymentOne Stipulation, the pleadings filed by the Debtor in support of the
5 Motion prior to the October 15 Interim Hearing and the statements made at the October 15 Interim
6 Hearing, and Bankruptcy Code Sections 105, 361, and 363, the Court on October 16 Interim
7 Hearing signed its "Further Order Approving Interim Use Of Cash Collateral And Granting
8 Replacement Liens And Approving First Amended Stipulation With PaymentOne Corporation
9 Regarding Use Of Cash Collateral And Adequate Protection On An Interim Basis Through And
10 Including November 2, 2007" (the "October 15 Interim Order").

11 A further interim hearing (the "November 2 Interim Hearing") with respect to the
12 Motion seeking further interim approval of the Debtor's use of cash collateral through and
13 including November 16, 2007, or as soon thereafter as the Court and counsel are available for a
14 further hearing on the Motion, including further interim approval of the First Amended
15 PaymentOne Stipulation duly came on for hearing before the undersigned United States
16 Bankruptcy Judge at the above-noted place and time set forth on the caption page of this Order.
17 Appearances were as noted in the record at the November 2 Interim Hearing.

18 Prior to the November 2 Interim Hearing, the Debtor and the Committee filed a
19 stipulation (the "Further Committee Support Stipulation") further stipulating to the to the Debtor's
20 use of cash collateral in accordance with the "Budget" (as such term is defined in the following
21 paragraph) on a further interim basis through and including November 16, 2007, or as soon
22 thereafter as the Court and counsel are available for a further hearing on the Motion.

23 Pursuant to the Motion, as further revised by the pleadings filed by the Debtor in
24 support of the Motion prior to the September 26 Interim Hearing, the October 15 Interim Hearing
25 and the November 2 Interim Hearing, including without limitation the Notice of the November 2
26 Interim Hearing, the Notice of Signing of Order regarding the October 15 Interim Order, the
27 Declaration of Paul Weber dated October 11, 2007 in support of the Debtor's October 15 Interim
28

Hearing on Cash Collateral (the "October 11 Weber Declaration") including the revised budget attached as Exhibit B to the October 11 Weber Declaration (the "Budget"), the Debtor's reply to the oppositions to the Motion and in support of the Motion, the statements made at the November 2 Interim Hearing, and Bankruptcy Code Sections 105, 361, and 363, the Debtor seeks an order from the Court: (1) authorizing the Debtor to use certain assets of the Debtor which constitute "cash collateral" as defined in Bankruptcy Code section 363(a) (such assets of the Debtor shall be referred to herein as the "Cash Collateral") on a an interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion; (2) granting approval of the First Amended PaymentOne Stipulation and the terms and conditions set forth therein as revised in this Order on an interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion; and (3) granting PaymentOne Corporation ("PaymentOne"), POL, Inc. ("POL")¹, Network Telephone Services, Inc. ("Network Telephone"), Personal Voice, Inc. ("Personal Voice") and Public Communication Services, Inc. ("Public Communication") (collectively, the "Alleged Cash Collateral Secured Creditors"), as adequate protection for the use by the Debtor of Cash Collateral in which the Alleged Cash Collateral Secured Creditors have an alleged interest, a replacement lien upon certain of the Debtor's personal property as set forth in this Order (and in the case of PaymentOne as set forth in the First Amended PaymentOne Stipulation), but only to the extent each respective Alleged Cash Collateral Secured Creditors possessed valid, perfected and enforceable prepetition liens in the Cash Collateral; and (4) the

¹ The following entities are collectively referred to in this Order as "POL": Access Programs, Inc.; Action Date Connections, Inc.; Benchmark Communications, Inc.; Blazen Communications, Inc.; Call Transfer Services, Inc.; Cassiopeia Group, Inc.; Clear Command Telecommunications, Inc.; Country Club Network Services, Inc.; Date Finders Singles, Inc.; Enhanced Phone Services, Inc.; Inovate Telecommunications, Inc.; Invesco Telecommunications, Inc.; Listen Com. Inc.; LJ Internet, Inc.; Love Dating Network, Inc.; Lunar Tel, Inc.; Messenger Com, Inc.; Omnipresent Digital, Inc.; Palisade Telcom, Inc.; POL, Inc.; Psychic, Inc.; Rebound Communications, Inc.; Singles Date Match, Inc.; Special Comtel, Ltd.; Spring Telecom, Inc.; Vesstone Telecommunications, Inc.; Voicemail, Inc.; Voice Services, Ltd.; Vortex Communications & Telephone, Inc.; Wonder Network, Inc.

1 setting of a final hearing on the Motion including approval of the First Amended PaymentOne
2 Stipulation (the "Final Hearing") pursuant to Rule 4001 of the Federal Rules of Bankruptcy
3 Procedure (the "Bankruptcy Rules").

4 The Court, having reviewed and considered the Motion, and all pleadings filed in
5 support thereof including without limitation the Notice of the Motion, the Introductory Statement
6 filed in support of the Motion, the Declaration of Ken Dawson filed in support of the Motion, the
7 Debtor's Stipulation with PaymentOne Corporation regarding the Debtor's use of Cash Collateral
8 which was attached as an exhibit to the Motion, the First Amended PaymentOne Stipulation
9 presented at the Interim Hearing, the two Declarations of Evan Meyer in support of the Motion
10 dated September 24, 2007, the Declaration of Joe Lynam in support of the Motion, the Notice of
11 the October 15 Interim Hearing, the Notice of Entry of Order regarding the Interim Order, the
12 October 11 Weber Declaration including the Budget, the Supplemental Declaration of Ken
13 Dawson filed in support of the Motion dated October 11, 2007 (the "October 11 Dawson
14 Declaration"), the Committee Support Stipulation, the Notice of the November 2 Interim Hearing,
15 the Notice of Signing of Order regarding the October 15 Interim Order, the Further Committee
16 Support Stipulation, the oppositions to the Motion filed in connection with the November 2
17 Interim Hearing, including the oppositions filed by the Receiver, the Federal Trade Commission
18 (the "FTC") and Personal Voice (collectively, the foregoing oppositions and joinder the
19 "Oppositions") as well as any other oppositions filed with the Court prior to the November 2
20 Interim Hearing or raised at the November 2 Interim Hearing, the reply to the oppositions and in
21 support of the Motion including the reply filed by the Debtor, the other matters of record in this
22 Bankruptcy Case, the arguments and representations of counsel at the November 2 Interim
23 Hearing, having completed both the September 26 Interim hearing, the October 15 Interim
24 Hearing, and the November 2 Interim Hearing in accordance with Rule 4001 of the Bankruptcy
25 Rules, and good cause appearing therefor,
26

27 **THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

28 1. The Debtor filed a voluntary petition for relief under Chapter 11 of the

1 Bankruptcy Code on September 16, 2007 (the "Petition Date"). No trustee or examiner has been
2 appointed in this case, and the Debtor is authorized to operate its business as a debtor-in-
3 possession.

4 2. The Court has jurisdiction over these proceedings and the parties and
5 property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding
6 within the meaning of 28 U.S.C. § 157(b)(2).

7 3. Pursuant to §§ 102(1) and 363 of the Bankruptcy Code and Bankruptcy
8 Rule 4001 including Bankruptcy Rule 4001(b) and (d), the Debtor has provided such notice as was
9 practicable and appropriate under the circumstances of the time, place and nature of the November
10 2 Interim Hearing and opportunity to object to the entry of this Order to among others: (1) the
11 Alleged Cash Collateral Secured Creditors; (2) each creditor on the List of 30 Largest Creditors
12 filed pursuant to Bankruptcy Rule 1007(d); (3) the Office of the United States Trustee; (4) other
13 significant parties in interest, including the Receiver and the FTC; and (5) those parties who had
14 filed with the Court filed a request for service pursuant to Bankruptcy Rule 2002. The foregoing
15 notice is adequate and sufficient in light of the nature of the relief requested in the Motion as
16 revised.

17 4. The Debtor must have the use of cash generated from the Debtor's assets
18 including without limitation the Debtor's prepetition assets which each of the Alleged Cash
19 Collateral Secured Creditors claims to be its Cash Collateral in order to continue to operate and
20 preserve the value of Debtor's estate.

21 5. Unless the Debtor is permitted to use the Cash Collateral, the Debtor's
22 ability to operate its business, pay expenses of this Bankruptcy Case, and to preserve and maintain
23 the property and assets of its estate and to reorganize will be immediately and irreparably
24 jeopardized, and the Debtor's use of the Cash Collateral is necessary to avoid immediate and
25 irreparable harm to the Debtor and the Debtor's bankruptcy estate.

26 6. The level of adequate protection for the Alleged Cash Collateral Secured
27 Creditors proposed to be provided by the Debtor in the Motion as revised and as more particularly
28 set forth below, in return for the use of the Cash Collateral, is reasonable.

7. Good cause has been shown for entry of this Order, including without limitation the approval of the First Amended PaymentOne Stipulation and the terms and conditions set forth therein as revised by this Order on an interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion. Among other things, entry of this Order will preserve each of the Alleged Cash Collateral Secured Creditor's position vis-a-vis the Debtor and other creditors of the estate so that each of the respective Alleged Cash Collateral Secured Creditor's position vis-a-vis the Debtor and such other creditors is neither diminished nor enhanced by Debtor's use of Cash Collateral.

8. To the extent that any of the foregoing findings constitute or include conclusions of law, they shall be so deemed.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion, as amended including by the relief sought in connection with PaymentOne, is approved on a further interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion, and the First Amended PaymentOne Stipulation and terms and conditions set forth therein as revised by this Order are approved on a further interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion. Use of Cash Collateral as set forth in the Budget which is attached as Exhibit B to the October 11 Weber Declaration is approved on a further interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion. Notwithstanding anything to the contrary contained in the First Amended PaymentOne Stipulation, no super-priority administrative expense claim pursuant to Bankruptcy Code Section 507(b) is granted or provided to PaymentOne or to any other Alleged Cash Collateral Secured Creditor on a further interim basis through and including November 16, 2007, or as soon thereafter as the Court and counsel are available for a further hearing on the Motion, provided, however, that such claim will be determined at the Final Hearing. Notwithstanding the foregoing, PaymentOne (and any other Alleged Cash Collateral Secured Creditor beneficiary of this Order), reserves

1 statutory rights it may have as a matter of law under Bankruptcy Code section 507(b) or any other
2 provision of the Bankruptcy Code, and the Debtor and its bankruptcy estate reserve all defenses
3 thereto. This Order is valid immediately and is fully effective upon its entry.

4 2. Oppositions to the Motion, including without limitation the Oppositions, as
5 well as any other oppositions filed with the Court prior to the November 2 Interim Hearing or
6 raised at the November 2 Interim Hearing, to the extent not withdrawn, are overruled.

7 3. The Debtor may use Cash Collateral in which PaymentOne has an alleged
8 interest in accordance with the First Amended PaymentOne Stipulation as revised by this Order.

9 4. The Debtor is authorized to pay PaymentOne the Pipeline Collection
10 Property in accordance with the terms and conditions of the First Amended PaymentOne
11 Stipulation as revised by this Order and the October 11 Weber Declaration including its attached
12 Budget filed in this Bankruptcy Case.

13 5. PaymentOne is granted, pursuant to Bankruptcy Code sections 361(2) and
14 363(e), valid, perfected and enforceable replacement liens upon all post-petition property of the
15 Debtor of the same type and character of any pre-petition property as to which PaymentOne had
16 valid, perfected and enforceable security interests or liens (including any proceeds thereof to the
17 extent that PaymentOne had valid, perfected and enforceable pre-petition security interests or pre-
18 petition liens in proceeds). Notwithstanding anything to the contrary contained in the First
19 Amended PaymentOne Stipulation or this Order, the replacement liens granted to PaymentOne
20 shall not include any Bankruptcy Code chapter 5 avoidance actions or the proceeds thereof. The
21 replacement liens granted to PaymentOne shall be automatically perfected pursuant to this Order
22 and PaymentOne shall not be required to take any further action to perfect such liens.

23 6. PaymentOne's replacement liens on the post-petition property shall have the
24 same priority vis-a-vis other liens and interests as PaymentOne's pre-petition liens and security
25 interests have vis-a-vis such other liens and interests. The replacement liens granted to
26 PaymentOne by this Order are intended to preserve PaymentOne's position vis-a-vis the Debtor
27 and other creditors of the estate so that PaymentOne's position vis-a-vis the Debtor and such other
28

1 creditors is neither diminished nor enhanced by Debtor's use of Cash Collateral and PaymentOne's
2 receipt of replacement liens.

3 7. The replacement liens granted to PaymentOne shall be subordinated from
4 the Petition Date until further order of the Court to any allowed on an interim or final basis
5 expenses of this bankruptcy case including without limitation any allowed on an interim or final
6 basis fees and expenses of professionals retained by the Debtor and any official committee
7 appointed in this bankruptcy case as well as those of any trustee subsequently appointed in the
8 bankruptcy case and such trustee's professionals, subject to the terms and conditions set forth in
9 the First Amended PaymentOne Stipulation, but amended for the time period up to and including
10 November 16, 2007 to strike the following language from Paragraph 8 of the First Amended
11 PaymentOne Stipulation: ", but only to the extent such fees and expenses are provided for in the
12 Budget and were actually incurred before this First Amended Stipulation terminated."

13 8. Notwithstanding anything to the contrary set forth in this Order, this Order
14 does not determine whether PaymentOne has any valid, perfected or enforceable prepetition liens
15 or security interests in the Cash Collateral or any of the Debtor's other assets, and both the Debtor
16 and PaymentOne reserve all rights and defenses with respect thereto. The replacement liens
17 granted to PaymentOne in consideration of its asserted prepetition liens pursuant to this Order are
18 effective only to the extent that PaymentOne's prepetition liens in the Cash Collateral are valid,
19 perfected and enforceable.

20 9. The Debtor may use Cash Collateral in which POL has an alleged interest.

21 10. POL is granted, pursuant to Bankruptcy Code sections 361(2) and 363(e),
22 valid, perfected and enforceable replacement liens upon all post-petition property of the Debtor of
23 the same type and character of any pre-petition property as to which POL had valid, perfected and
24 enforceable security interests or liens, but only to the extent of Cash Collateral used by the Debtor.
25 Notwithstanding anything to the contrary contained in this Order, the replacement liens granted to
26 POL shall not include any Bankruptcy Code chapter 5 avoidance actions or the proceeds thereof.
27 The replacement liens granted to POL shall be automatically perfected pursuant to this Order and
28

1 POL shall not be required to take any further action to perfect such liens.

2 11. POL's replacement liens on the post-petition property shall have the same
3 priority vis-a-vis other liens and interests as POL's pre-petition liens and security interests have
4 vis-a-vis such other liens and interests. The replacement liens granted to POL by this Order are
5 intended to preserve POL's position vis-a-vis the Debtor and other creditors of the estate so that
6 POL's position vis-a-vis the Debtor and such other creditors is neither diminished nor enhanced by
7 Debtor's use of Cash Collateral and POL's receipt of replacement liens.

8 12. The replacement liens granted to POL shall be subordinated from the
9 Petition Date until further order of the Court to any allowed on an interim or final basis expenses
10 of this bankruptcy case including without limitation any allowed on an interim or final basis fees
11 and expenses of professionals retained by the Debtor and any official committee appointed in this
12 bankruptcy case as well as those of any trustee subsequently appointed in the bankruptcy case and
13 such trustee's professionals.

14 13. Notwithstanding anything to the contrary set forth in this Order, this Order
15 does not determine whether POL has any valid, perfected or enforceable prepetition liens or
16 security interests in the Cash Collateral or any of the Debtor's other assets, and both the Debtor
17 and POL reserve all rights and defenses with respect thereto. The replacement liens granted to
18 POL pursuant to this Order are effective only to the extent that POL's prepetition liens in the Cash
19 Collateral are valid, perfected and enforceable.

20 14. The Debtor may use Cash Collateral in which Network Telephone has an
21 alleged interest.

22 15. Network Telephone is granted, pursuant to Bankruptcy Code
23 sections 361(2) and 363(e), valid, perfected and enforceable replacement liens upon all post-
24 petition property of the Debtor of the same type and character of any pre-petition property as to
25 which Network Telephone had valid, perfected and enforceable security interests or liens, but only
26 to the extent of Cash Collateral used by the Debtor. Notwithstanding anything to the contrary
27 contained in this Order, the replacement liens granted to Network Telephone shall not include any
28

1 Bankruptcy Code chapter 5 avoidance actions or the proceeds thereof. The replacement liens
2 granted to Network Telephone shall be automatically perfected pursuant to this Order and
3 Network Telephone shall not be required to take any further action to perfect such liens.

4 16. Network Telephone's replacement liens on the post-petition property shall
5 have the same priority vis-a-vis other liens and interests as Network Telephone's pre-petition liens
6 and security interests have vis-a-vis such other liens and interests. The replacement liens granted
7 to Network Telephone by this Order are intended to preserve Network Telephone's position vis-a-
8 vis the Debtor and other creditors of the estate so that Network Telephone's position vis-a-vis the
9 Debtor and such other creditors is neither diminished nor enhanced by Debtor's use of Cash
10 Collateral and Network Telephone's receipt of replacement liens.

11 17. The replacement liens granted to Network Telephone shall be subordinated
12 from the Petition Date until further order of the Court to any allowed on an interim or final basis
13 expenses of this bankruptcy case including without limitation any allowed on an interim or final
14 basis fees and expenses of professionals retained by the Debtor and any official committee
15 appointed in this bankruptcy case as well as those of any trustee subsequently appointed in the
16 bankruptcy case and such trustee's professionals.

17 18. Notwithstanding anything to the contrary set forth in this Order, this Order
18 does not determine whether Network Telephone has any valid, perfected or enforceable
19 prepetition liens or security interests in the Cash Collateral or any of the Debtor's other assets, and
20 both the Debtor and Network Telephone reserve all rights and defenses with respect thereto. The
21 replacement liens granted to Network Telephone pursuant to this Order are effective only to the
22 extent that Network Telephone's prepetition liens in the Cash Collateral are valid, perfected and
23 enforceable.

24 19. The Debtor may use Cash Collateral in which Personal Voice has an alleged
25 interest.

26 20. Personal Voice is granted, pursuant to Bankruptcy Code sections 361(2) and
27 363(e), valid, perfected and enforceable replacement liens upon all post-petition property of the
28

1 Debtor of the same type and character of any pre-petition property as to which Personal Voice had
2 valid, perfected and enforceable security interests or liens, but only to the extent of Cash Collateral
3 used by the Debtor. Notwithstanding anything to the contrary contained in this Order, the
4 replacement liens granted to Personal Voice shall not include any Bankruptcy Code chapter 5
5 avoidance actions or the proceeds thereof. The replacement liens granted to Personal Voice shall
6 be automatically perfected pursuant to this Order and Personal Voice shall not be required to take
7 any further action to perfect such liens.

8 21. Personal Voice's replacement liens on the post-petition property shall have
9 the same priority vis-a-vis other liens and interests as Personal Voice's pre-petition liens and
10 security interests have vis-a-vis such other liens and interests. The replacement liens granted to
11 POL by this Order are intended to preserve Personal Voice's position vis-a-vis the Debtor and
12 other creditors of the estate so that Personal Voice's position vis-a-vis the Debtor and such other
13 creditors is neither diminished nor enhanced by Debtor's use of Cash Collateral and Personal
14 Voice's receipt of replacement liens.

15 22. The replacement liens granted to Personal Voice shall be subordinated from
16 the Petition Date until further order of the Court to any allowed on an interim or final basis
17 expenses of this bankruptcy case including without limitation any allowed on an interim or final
18 basis fees and expenses of professionals retained by the Debtor and any official committee
19 appointed in this bankruptcy case as well as those of any trustee subsequently appointed in the
20 bankruptcy case and such trustee's professionals.

21 23. Notwithstanding anything to the contrary set forth in this Order, this Order
22 does not determine whether Personal Voice has any valid, perfected or enforceable prepetition
23 liens or security interests in the Cash Collateral or any of the Debtor's other assets, and both the
24 Debtor and Personal Voice reserve all rights and defenses with respect thereto. The replacement
25 liens granted to Personal Voice pursuant to this Order are effective only to the extent that Personal
26 Voice's prepetition liens in the Cash Collateral are valid, perfected and enforceable.

27 24. The Debtor may use Cash Collateral in which Public Communication has an
28

1 alleged interest.

2 25. Public Communication is granted, pursuant to Bankruptcy Code
3 sections 361(2) and 363(e), valid, perfected and enforceable replacement liens upon all post-
4 petition property of the Debtor of the same type and character of any pre-petition property as to
5 which Public Communication had valid, perfected and enforceable security interests or liens, but
6 only to the extent of Cash Collateral used by the Debtor. Notwithstanding anything to the contrary
7 contained in this Order, the replacement liens granted to Public Communication shall not include
8 any Bankruptcy Code chapter 5 avoidance actions or the proceeds thereof. The replacement liens
9 granted to Public Communication shall be automatically perfected pursuant to this Order and
10 Public Communication shall not be required to take any further action to perfect such liens.

11 26. Public Communication's replacement liens on the post-petition property
12 shall have the same priority vis-a-vis other liens and interests as Public Communication's pre-
13 petition liens and security interests have vis-a-vis such other liens and interests. The replacement
14 liens granted to Public Communication by this Order are intended to preserve Public
15 Communication's position vis-a-vis the Debtor and other creditors of the estate so that Public
16 Communication's position vis-a-vis the Debtor and such other creditors is neither diminished nor
17 enhanced by Debtor's use of Cash Collateral and Public Communication's receipt of replacement
18 liens.

19 27. The replacement liens granted to Public Communication shall be
20 subordinated from the Petition Date until further order of the Court to any allowed on an interim
21 or final basis expenses of this bankruptcy case including without limitation any allowed on an
22 interim or final basis fees and expenses of professionals retained by the Debtor and any official
23 committee appointed in this bankruptcy case as well as those of any trustee subsequently
24 appointed in the bankruptcy case and such trustee's professionals.

25 28. Notwithstanding anything to the contrary set forth in this Order, this Order
26 does not determine whether Public Communication has any valid, perfected or enforceable
27 prepetition liens or security interests in the Cash Collateral or any of the Debtor's other assets, and
28

1 both the Debtor and Public Communication reserve all rights and defenses with respect thereto.
 2 The replacement liens granted to Public Communication pursuant to this Order are effective only
 3 to the extent that Public Communication's prepetition liens in the Cash Collateral are valid,
 4 perfected and enforceable.

5 29. The use of Cash Collateral shall be in the amounts, and for the purposes, set
 6 forth on the Budget. Notwithstanding anything to the contrary in the First Amended PaymentOne
 7 Stipulation or this Order, to the extent that the Debtor does not spend the full amount of funds
 8 which it is authorized to spend in the Budget for a given week period, the Debtor does not "lose"
 9 the right to spend thereafter such unused funds, but instead the Debtor may spend such unused
 10 funds in a subsequent week period(s) in addition to whatever additional funds the Debtor is
 11 authorized to spend in that subsequent week period(s) as provided in the Budget.

12 30. The Court shall hold the Final Hearing on the Motion including the First
 13 Amended PaymentOne Stipulation on _____, 2007 at __:__.m.

14 31. The Debtor shall, on or before _____, 2007, serve by U.S. mail
 15 and email service to the extent that the Debtor's counsel has an email address for any party or its
 16 counsel, a copy of this Order and a notice regarding the Final Hearing, to (i) the parties having
 17 been given notice of the November 2 Interim Hearing, and (ii) any other party ordered by the
 18 Court or who has filed with the Court and served on the Debtor's counsel a request for service
 19 pursuant to Bankruptcy Rule 2002. Such notice shall state that any party in interest objecting to
 20 the approval of the Motion on a final basis shall file a written objection with the Court no later
 21 than _____, 2007, which objection shall be filed with the Court and served so that it is
 22 received on or before 5:00 p.m. (Pacific Time) of such date by the Debtor's counsel, the
 23 Committee's counsel, and the Office of the United States Trustee at the following contact
 24 information:
 25

26 Counsel to Debtor:

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 28 Four Embarcadero Center, Suite 1700
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Office of the United States Trustee:

Office of the United States Trustee
280 S. First Street, Suite 268
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32. If a timely objection is filed, served and received, a written reply thereto shall not be required but may be filed with the Court and served so that it is received by the objecting party no later than _____, 2007 on or before 11:59 p.m. (Pacific Time).

**** END OF ORDER ****

COURT SERVICE LIST

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